

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 04.12.2017	Delivered on 5.2.2018
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CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.Nos.1364 to 1369 of 2017

W.A.No.1364 of 2017:-

- 1.The Chairman,
Tamil Nadu Housing Board,
Nandanam, Anna Salai,
Chennai 35.
 - 2.The Executive Engineer
and Administrative Officer,
Tamil Nadu Housing Board,
Villupuram Housing Unit,
East Pondy Road, Maharajapuram
Villupuram ..Appellants/Respondents
- versus
- 1.P.Duraikannnu ..1st Respondent in W.A. 1364/2017.
 1. J. Thenmozhi
W/o Jayaraman ..1st Respondent in W.A.No.1365/2017
 1. P. Veerasamy
S/o Palanisamy ..1st Respondent in W.A.No.1366/2017
 1. P. Sundaramoorthy
S/o Palanisamy ..1st Respondent in W.A.No.1367/2017
 - 2.The Secretary to Government,
Housing and Urban Development Department,
Secretariat, Chennai 9
 3. The District Collector,
Cuddalore District
...2nd & 3rd Respondent in W.A. No 1364 to 1367/2017.
...4th & 5th Respondent in W.A. 1368 & 1369/2017.
 1. P. Renuga ..1st Respondent in W.A. 1368 & 1369/2017.
W/p A. Palamalai
 2. P.R. Balasankar
S/o A. Palamalai

3. P.R. Jayaseelan
S/o A.Palamalai

..2nd & 3rd Respondent in
W.A. 1368 & 1369/2017.

THE LAND ACQUISITION OFFICER
AND SPECIAL TAHSILDAR TAMIL NADU HOUSING
BOARD SCHEME VELISEMMANDALAM VILLAGE
CUDDALORE DIST.

..6th Respondent in W.A. 1369/2017

Prayer in W.A.No.1364/2017:

Writ Appeal filed under clause 15 of the letter patent Act to allow the Writ appeal by setting aside the Order passed by the Learned Judge in WP No. 19086/2013 dated 22/12/2014 such further or other order as this Honble Court.

Prayer in W.A.No.1365/2017

Writ Appeal filed under clause 15 of the letter patent Act to allow the Writ Appeal by setting aside the Order passed by the Learned Judge in WP No. 19087/2013 dated 22/12/2014 such further or other order as this Honble Court.

Prayer in W.A.1366/2017

Writ Appeal filed under clause 15 of the letter patent Act to allow the Writ Appeal by setting aside the Order passed by the Learned Judge in WP No. 19088/2013 dated 22/12/2014 such further or other order as this Honble Court.

Prayer in W.A.1367/2017

Writ Appeal filed under clause 15 of the letter patent Act to allow the Writ Appeal by setting aside the Order passed by the Learned Judge in WP No. 19089/2013 dated 22/12/2014 such further or other order as this Honble Court.

Prayer in W.A.1368/2017

Writ Appeal filed under clause 15 of the letter patent Act to allow the Writ Appeal by setting aside the Order passed by the Learned Judge in WP No. 21693/2013 dated 22/12/2014 such further or other order as this Honble Court.

Prayer in W.A. 1369/2017

Writ Appeal filed under clause 15 of the letter patent Act to allow the Writ Appeal by setting aside the Order passed by the Learned Judge in WP No. 21694/2013 dated 22/12/2014 such further or other order as this Honble Court.

Prayer in W.P.No.19086 of 2013:

Writ Petition filed under Article 226 of the constitution of India Calling for the records of the 1st respondent in his proceeding in Letter No. 7197/Ne.A.2(1)/13-3 dated 10.06.2013 and quash the same and consequently direct the Respondents to re-convey the land situated in Survey No.13/5 measuring an extent of 0.13.50 Hectares in Velisemmandalam Village Cuddalore District to the petitioner.

Prayer in W.P.No.19087/2013:

Writ Petition filed under Article 226 of the constitution of India Calling for the records of the 1st respondent in his proceeding in Letter No. 7197/Ne.A.2(1)/13-4 dated 10.06.2013 and quash the same and consequently direct the Respondents to re-convey the land situated in Survey No.13/5 measuring an extent of 0.40.50 Hectares in Velisemmandalam Village Cuddalore District to the petitioner.

Prayer in W.P.No.19088/2013:

Writ Petition filed under Article 226 of the constitution of India Calling for the records of the 1st respondent in his proceeding in Letter No. 7197/Ne.A.2(1)/13-5 dated 10.06.2013 and quash the same and consequently direct the Respondents to re-convey the land situated in Survey No.13/5 measuring an extent of 0.13.50 Hectares in Velisemmandalam Village Cuddalore District to the petitioner.

Prayer in W.P.No.19089/2013:

Writ Petition filed under Article 226 of the constitution of India Calling for the records of the 1st respondent in his proceeding in Letter No. 7197/Ne.A.2(1)/13-6 dated 10.06.2013 and quash the same and consequently direct the Respondents to re-convey the land situated in Survey No.13/5 measuring an extent of 0.13.50 Hectares in Velisemmandalam Village Cuddalore District to the petitioner.

Prayer in W.P.No.21693/2013:

Writ Petition filed under Article 226 of the constitution of India calling for the records of the 1st respondent in his proceeding in Letter NO.7303/ Ne.A. 2(1)/ 2011-6 dated 10.7.2013 and quash the same and consequently direct the respondents to release the land situated in Survey No.13/5 measuring an extent of 1.42.00 Hectares in Velisemmandalam Village Cuddalore District to the petitioners.

Prayer in W.P.No.21694/2013:

Writ Petition filed under Article 226 of the constitution of India calling for the records of the 4th respondent relating to award NO.5/95 dated 5.1.1995 and quash the same in respect of the petitioners herein and consequently direct the respondents to release the land situated in Survey No.13/5 measuring an extent of 1.42.00 Hectares in Velisemmandalam Village Cuddalore District to the petitioners.

Appearance :-

Mr.V.Anandhamurthy, Additional Government Pleader, for the appellants in All Writ appeals.

Mrs.Sri Jayanthi, Special Government Pleader, for respondents 2 and 3 in W.A.No.1364 to 1367 of 2017, respondents 4 and 5 in W.A.No.1368 of 2017 and respondents 4 to 6 in W.A.No.1369 of 2017.

Mr.M.Kavi Veerappan, for 1st Respondent in W.A.No.1364 to 1367 of 2017 and respondents 1 to 3 in W.A.No.1368 and 1369 of 2017

COMMON JUDGMENT
K.K.SASIDHARAN, J.

Introductory:-

The learned Single Judge directed the Tamil Nadu Housing Board to re-convey the acquired land to the erstwhile landowners, notwithstanding the utilization of the lands for the purpose for which it was acquired. The requisitioning body has come up with the appeals with a contention that only after receiving the enhanced compensation through Court and partially implementing the housing scheme, claim for re-conveyance under Section 48B of Land Acquisition Act was made, without divulging the background facts and ground situation.

Summary of facts:-

W.A.No.1364 of 2017:-

2. The Government of Tamil Nadu at the instance of the Tamil Nadu Housing Board acquired 5.30 acres of land in S.No.13/5, Velisemmandalam Village, Cuddalore Taluk. The notification under Section 4(1) of the Land Acquisition Act was issued on 19 September 1991. It was followed by award dated 5 January 1995 in Award No.5/95.

3. The land owned by the first respondent was part of large extent of land acquired by the Government.

4. The first respondent received the compensation directly. Thereafter, possession was taken and handed over to the Housing Board on 1 March 1996.

5. The first respondent made an application for reference to the civil court for enhancement of compensation under Section 18 of the Land Acquisition Act. The reference made in LAOP No.30/2002 was answered by the Additional District Court, Cuddalore, by enhancing the compensation. The issue regarding enhancement has become final, consequent to the disposal of the relevant appeal along with the appeals in A.S.Nos.761 to 763 of 2004.

6. The first respondent received the entire enhanced compensation pursuant to the award, after the disposal of the first appeal.

7. There were certain legal proceedings initiated by the neighbouring land owners challenging the land acquisition. However, there was no challenge at the instance of the first respondent.

8. The first respondent submitted a representation for re-conveyance of the land. The representation was considered by the Government pursuant to the order passed by the writ court at the instance of the landowner.

9. The representation for re-conveyance was rejected by the Government by order dated 10 June 2013 primarily on the ground that the land has already been utilized partly and it is needed for the purpose for which it was acquired.

10. The order dated 10 June 2013 was challenged by the first respondent before the writ court in W.P.No.19086 of 2013.

11. The learned Single Judge allowed the Writ Petition on the ground that the acquired land is still lying vacant and that the developed plots are yet to be allotted to the general public. The order is under challenge in W.A.No.1364 of 2017.

W.A.No.1365 of 2017:-

12. The land owned by the first respondent, having an extent of 0.40.50H in S.No.13/5 in Velisemmandalam Village, Cuddalore District was part of the land acquired by the Tamil Nadu Housing Board under Section 4(1) notification dated 19 September 1991. The compensation amount was enhanced pursuant to the application submitted by the first respondent for reference. The enhanced compensation was paid subsequent to the disposal of the appeals in A.S.Nos.761 to 763 of 2004.

13. The first respondent submitted a representation for re-conveyance. The representation was rejected by order dated 10 June 2013 by the Government. The order was put in issue in W.P.No.19087 of 2013. The learned Single Judge allowed the Writ Petition. The order is under challenge in W.A.No.1365 of 2017.

W.A.No.1366 of 2013:-

14. The Government acquired 0.13.50H of land owned by the first respondent. The Government acquired his land along with larger extent for a housing scheme floated by the Tamil Nadu Housing Board. After passing the award by the Land Acquisition Officer, the first respondent received the compensation. Thereafter, at his instance, the matter was referred to the Additional District Court, Cuddalore in LAOP No.31/2002. The issue regarding enhancement of compensation attained finality and consequent to the disposal of the appeals in A.S.No.761 to 763 of 2004, the first respondent received the enhanced compensation. Thereafter, the first respondent submitted a representation for re-conveyance. The claim made by the first respondent for re-conveyance of the property was rejected by the Government by order dated 10 June 2013. The said order was challenged in W.P.No.19088 of 2013. The learned Single Judge allowed the Writ Petition. The order is under challenge in W.A.No.1366 of 2017.

W.A.No.1367 of 2017:-

15. The land owned by the first respondent was acquired by the Government for a housing scheme. The Government acquired larger extent of land in the District of Cuddalore as per notification under Section 4(1) dated 19 September 1991. The award dated 5 January 1995 contained the name of the first respondent as the owner of a portion of the land acquired. The first respondent after receiving compensation, submitted an application for reference. The reference was answered by the Additional District Court, Cuddalore. The learned Additional District Judge enhanced the compensation. The issue has become final after the disposal of the connected appeals by the High Court in A.S.Nos.761 to 763 of 2004. The first respondent received the enhanced compensation in 2004. Thereafter, he made a claim for re-conveyance. The representation submitted by the first respondent was considered by the Government in the light of Section 48B of the Land Acquisition Act. The Government having found that the land was partly used for the purpose for which it was acquired, rejected the claim for re-conveyance. The said order was challenged in W.P.No.19089 of 2013. The learned Single Judge allowed the Writ Petition. The order is under challenge in W.A.No.1367 of 2017.

W.A.No.1368 of 2017:-

16. The Government of Tamil Nadu acquired large extent of land in the District of Cuddalore at the instance of the Tamil Nadu Housing Board. The notification under Section 4(1) of the Land Acquisition Act was issued in 19 September 1991. The land owned by the respondents 1 to 3 was also acquired along with the adjacent land. The compensation amount was redetermined by the Reference Court. The respondents 1 to 3 received the

compensation from the Land Acquisition Officer. The Respondents 1 to 3 submitted representation to the Government, invoking Section 48B of the Land Acquisition Act on the ground that the land was not used for the purpose for which it was acquired. The Government negatived the claim with an observation that the land has already been developed and it would be allotted to the public. The order dated 10 July 2013 was challenged in W.P.No.21693 of 2013. The learned Single Judge allowed the Writ Petition and directed re-conveyance of the land to the respondents 1 to 3. The said order is under challenge in W.A.No.1368 of 2017.

W.A.No.1369 of 2017 :-

17. The land owned by respondents 1 to 3 was acquired by the Government along with a large extent for implementing housing scheme floated by the Tamil Nadu Housing Board. The respondents 1 to 3 received the compensation determined by the Land Acquisition Officer. The respondents 1 to 3 thereafter submitted representation under Section 48B of the Land Acquisition Act. The representation for re-conveyance was rejected by the Government by order dated 10 June 2013. Feeling aggrieved by the said order, the respondents 1 to 3 have filed Writ Petition in W.P.No.21694 of 2013. The learned Single Judge allowed the Writ Petition and issued a Mandamus for re-conveyance. The said order is challenged by the Housing Board in W.A.No.1369 of 2017.

Submission by parties:-

18. The learned Standing Counsel for the Tamil Nadu Housing Board contended that the acquired land has already been put to use by forming layouts and providing roads. The work regarding the development of 76 plots are in the final stage. The learned Single Judge was therefore not correct in his finding that the land is still kept vacant.

19. The learned counsel for the landowners contended that it was only during the pendency of the application for re-conveyance, the appellant started developing the land. Since the adjacent land was re-conveyed to the landowners in compliance of a Court order, the very scheme failed. The learned Judge was therefore correct in directing re-conveyance.

Discussion and Disposal:-

20. The land owned by the first respondent in W.A.Nos.1364 to 1367 of 2017 and respondents 1 to 3 in W.A.No.1368 and 1369 of 2017 (hereinafter referred to as "the landowners") were part of the larger extent of lands acquired for a housing scheme. The landowners never challenged the land acquisition. The land value was enhanced at the instance of the landowners. The reference reached up to the High Court. The enhanced amount was paid to the landowners in 2004.

21. The Tamil Nadu Housing Board (hereinafter referred to as "the Housing Board") took possession of the land on 1 March 1996. The Housing Board submitted plan for layout approval and it was sanctioned by the Competent Authority. The Board of Management of the Housing Board sanctioned a sum of Rs.327.50 lakhs for development works. It was only during the final stage of the development of 76 plots, the landowners made a claim for re-conveyance.

22. The acquired land was partly used for the original purpose. The remaining land was also subjected to development work, for allotment to the general public. The Government was therefore correct in rejecting the request for re-conveyance.

23. The landowners in their affidavit filed in support of the Writ Petitions have clearly admitted the development work undertaken by the Housing Board. The landowners even issued a contempt notice on the ground that it was not permissible to develop the land during the pendency of their application for re-conveyance, pursuant to the direction issued by the High Court.

24. The learned single Judge proceeded as if the land was not utilized for the original purpose. The said finding is factually incorrect in view of the string of documents produced by the Housing Board.

The law:-

25. Section 48-B was inserted by the State amendment in the Land Acquisition Act, for re-conveyance of the property. The provision reads thus:-

"48-B Transfer of land to original owner in certain cases- Where the Government are satisfied that the land vested in the Government under this Act is not required for the purpose for which it was acquired, or for any other public purpose, the Government may transfer such land to the original owner who is willing to repay the amount paid to him under this Act for the acquisition of such land inclusive of the amount referred to in sub-section (1-A) and (2) of Section 23, if any, paid under this Act."

26. The question of re-conveyance in terms of Section 48-B would arise only in case the Government is of the view that the land is not required for the purpose for which it was acquired or for any other public purpose. Before taking a decision for re-conveyance, the Government must be convinced that the land is not required not only for the purpose for which it was acquired,

but for any other public purpose also.

27. As observed by the Hon'ble Supreme Court in Tamil Nadu Housing Board v. Keeravani Ammal and others [(2007) 9 SCC 255], Section 48-B introduced into the Land Acquisition Act in the State of Tamil Nadu is an exception to the general rule that the land on acquisition become the property of the State and it could be used by the Government for any public purpose or in case, it is not needed for such public purpose, the same can also be sold by public auction. The provision like 48-B must therefore requires a strict construction, meaning thereby, satisfaction of the Government with regard to the non-utilisation of the land must be arrived at on the basis of relevant materials.

28. There is no right to compel the Government or the requisitioning body to re-convey the land either to the erstwhile land owner. The issue is no longer res integra in view of the string of decisions on the point.

29. The Supreme Court in Keeravani Ammal (cited supra) considered the scope and ambit of Section 48-B of the Land Acquisition Act. The Supreme Court made it very clear that there is no vested right to the land owners to claim re-conveyance. The Supreme Court, in the said decision, by quoting an earlier judgment in State of Kerala v. M.Bhaskaran Pillai [(1997) 5 SCC 432] held that in case the land is not required for the purpose for which it was acquired, it should be sold through public auction. It was further observed that the provision like Section 48-B is an exception to the general rule and as such, it should be construed very strictly.

30. The Hon'ble Supreme Court in Tamil Nadu Housing Board v. L.Chandrasekaran (dead) by Lrs. and others [(2010) 2 SCC 786] once again considered the scope of Section 48-B of the Land Acquisition Act and reiterated the position that there is no question of re-conveyance by the Government, in case, the land had already been transferred to the requisitioning body and the latter had utilised substantial portion thereof for execution of the Scheme.

"28. It need no emphasis that in exercise of power under Section 48-B of the Act, the Government can release the acquired land only till the same continues to vest in it and that too if it is satisfied that the acquired land is not needed for the purpose for which it was acquired or for any other public purpose. To put it differently, if the acquired land has already been transferred to other agency, the Government cannot exercise power under Section 48-B of

the Act and re-convey the same to the original owner. In any case, the Government cannot be compelled to re-convey the land to the original owner if the same can be utilised for any public purpose other than the one for which it was acquired."

31. The core issue before the Supreme Court in Rajasthan State Industrial Development and Investment Corporation v. Subhash Sindhi Cooperative Housing Society, Jaipur and others [(2013) 5 SCC 427], was as to whether transferee of land after issuance of Section 4(1) notification is entitled to claim release of land from acquiring authorities on the basis of similar release of land. The Hon'ble Supreme Court, by placing reliance on the earlier judgments indicated that the sale subsequent to Section 4(1) notification is void and there would be no need for an order for quashing as it would be automatically null and void without more ado. The question regarding discrimination was answered by the Supreme Court by observing that if the land of other similarly situated persons have been released, the Court must be satisfied that it is similarly situated in all respects, and has an independent right to get the land released. It was further observed that Article 14 of the Constitution does not envisage negative equality and it cannot be used to perpetuate any illegality. The Supreme Court set aside the order passed by the High Court directing re-conveyance and held that there was no right to claim release on the ground that others were given the benefit of such release.

32. The Government passed the individual impugned orders taking into account the utilisation of the land by the appellant in larger public interest.

33. We are therefore of the view that the learned single Judge was not correct in allowing the writ petitions filed by the landowners. The writ petitions are dismissed by setting aside the orders passed by the learned single Judge.

34. In the up shot, we allow the intra court appeals. No costs. Consequently, connected miscellaneous petition are closed.

s/d-
Assistant Registrar(CS IX)

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Sub-Assistant Registrar

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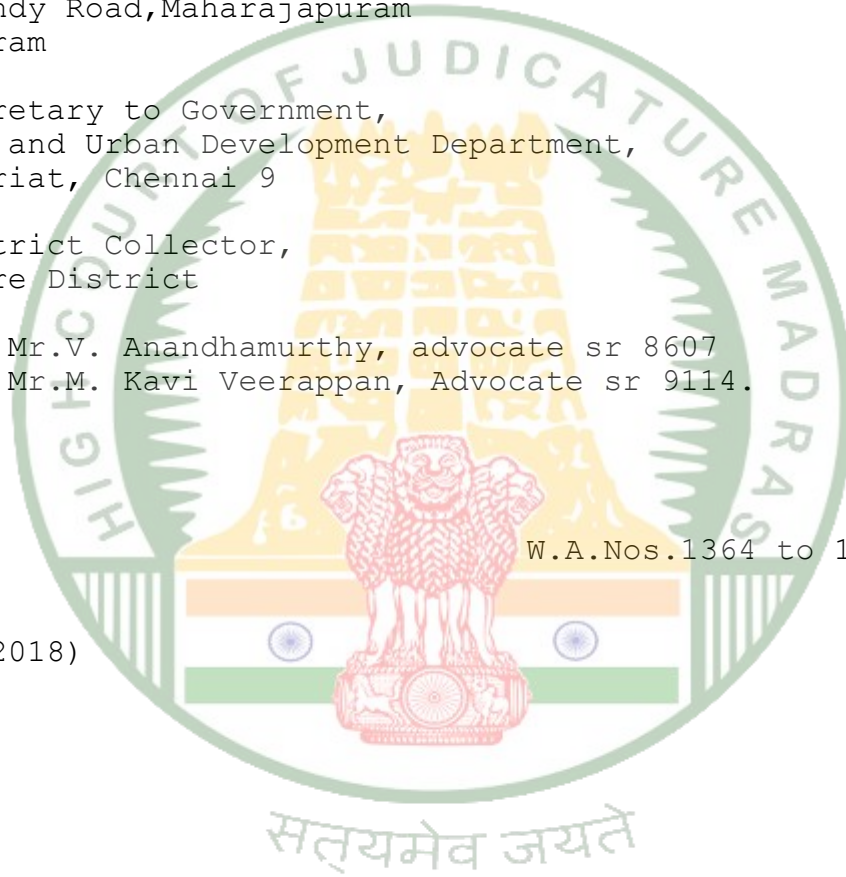
To

- 1.The Chairman,
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+6 Ccs to Mr.V. Anandhamurthy, advocate sr 8607
+6 Ccs to Mr.M. Kavi Veerappan, Advocate sr 9114.

W.A.Nos.1364 to 1369 of 2017

SSV(CO)
SP(22/02/2018)



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